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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,698	11/21/2003	Olivier Pinto	979-042	1348

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EXAMINER	
GRAY, JILL M	
ART UNIT	PAPER NUMBER
1774	

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <u>21</u> 10/719,698	Applicant(s) PINTO, OLIVIER	
	Examiner Jill M. Gray	Art Unit 1774	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/21/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

More specifically, in claim 1, the language of “made of a material based on a polymer obtained from a polymerizable liquid composition containing at least a precursor for said polymer including functional groups selected from acrylates, methacrylates, epoxies, vinyl ethers, allyl ethers and oxetanes” is vague and indefinite. This language fails to particularly point out and distinctly define the metes and bounds of the subject matter defined by the invention. The claim provides for a flame-retardant coating layer that is made from a nondescript material based on a nondescript polymer obtained from a nondescript polymerizable liquid composition that contains an unidentified precursor for said polymer. At best one can construe that functional groups are present, somewhere. Accordingly, this language is not precise, clear, and unambiguous and does not define the subject matter of the invention with a reasonable degree of particularity and distinctness.

Claims 2-18 are indefinite for the reasons stated in claim 1 because these claims do not clarify, add particularity or provide distinctness to the flame retardant coating layer.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasegawa et al, 6,755,995 B1 (Hasegawa) in view of Hall 6,025,422.

Hasegawa teaches a flame retardant cable comprising a transmission element and flame retardant coating layer surrounding said element wherein this coating layer is made of a halogen free material that includes functional groups and contains phosphorus, per claims 1-4. See column 1, lines 9-10, column 2, lines 41-57, and column 4, line 30. Also, the transmission element can be a conductor and the composition contains an anti-abrasion compound such as silicone as required by claims 7, 10-12, and 16-17. See column 5, lines 1-7. Hasegawa is silent as to the presence of a flame retardant element (claim 5-6) and a photoinitiator (claims 13-14 and 18). Hall teaches a flame retardant coating for optical fibers and cables, wherein said coating is applied as an outer jacket over flammable elements in known cable constructions. In addition, Hall teaches that cable jacketing compositions can contain a photoinitiator, which aids in maintaining a suitable density for the jacketing layer. It would have been

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obvious to form a cable of known cable construction wherein the composition is used as a jacketing layer to protect the transmission elements and flammable insulating layers from fire and scorching. The incorporation of a photoinitiator, claims 13-14 and 18 would have been an obvious variant in the composition of Hasegawa in order to obtain suitable cable jacketing density as taught by Hall. As to claims 8-9, these claims are product-by-process claims wherein patentability is based on the product itself and not the method of making. As to claim 15, it is the examiner's position that the specific acrylate is no more than a preferential selection of one acrylate from among many being used for its art recognized purpose. Accordingly, in the absence of factual evidence to the contrary, this is not construed to be a matter of invention.

Therefore, the combined teachings of Hasegawa and Hall would have rendered obvious the invention as claimed in present claims 1-18.

No claims are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)



Jill M. Gray  
Examiner  
Art Unit 1774

jmg